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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,121	11/13/2003	Andrew Paul Burgess	52743-012004	7680
7590	10/05/2004		EXAMINER	
Margaret M. Duncan McDermott, Will & Emery 227 West Monroe Chicago, IL 60606-5096			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/712,121	BURGESS, ANDREW PAUL <i>sf</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Amy J. Sterling	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 July 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3 and 6-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3 and 6-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This is the third non-final Office Action for application number 10/712,121, Deck Mounting Bracket, filed on 11/13/04. Claims 1, 3, 6-21 are pending. This action is in response to the Reply dated 7/30/04.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites the limitation "the intersection". There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 21, the phrase "or any other structural material" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (any structural material), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6-9, 11, 13, 14, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4641474 to Cannarsa.

The patent to Cannarsa discloses a metal mounting bracket (See Col. 1 line 26 for material selection) which is affixed to a side surface of a joist (42) and a bottom surface of a plank (46), the bracket having a planar, solid separating flange portion (14), a joist-fastening portion (18) connected approximately perpendicular to the separating flange, at an angle of approximately 90° and has a hole and fastener (56) for fastening the mounting bracket to the joist, a support flange (16) connected to the joist-fastening portion (18) and extends away from the joist-fastening portion at a an approximate 35 degree angle, which also has an aligned hole therein corresponding to the hole in the joist-fastening portion (18), and a plank-fastening portion (12) connected to the support flange with a hole therein and a fastener (54) for fastening the mounting bracket to the plank. Cannarsa discloses wherein the separating flange portion (14) and the plank-fastening portion (12) are substantially co-planar and a curved spacer (apex of device) portion between the plank-securing flange portion and the support flange portion.

Claims 15-17 stand rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4965980 to Leavens.

The patent to Leavens teaches the method of securing a plank to a joist which has the steps of, providing a mounting bracket having a first portion (22), a second portion (42) and a third portion (46), the second portion (42) being positioned between the first and third portions, placing the first portion (22) of the mounting bracket between a top surface of the joist (90) and a plank (96) and securing the second portion of the mounted bracket to a side surface of the joist (90) and securing the third portion (46) of the mounting bracket to the plank (96), wherein the second portion is secured to the side surface of the joist with a fastener (44) and the third portion is secured with a fastener (80).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4641474 to Cannarsa as applied to claim 8 above, and in view of United States Patent No. 5775048 to Orchard.

Cannarsa discloses applicant's basic inventive concept, all the elements which are shown above with the exception that it does not teach wherein the fastener is a nail, screw or bolt and that at the intersection between the joist fastening flange portion, the support flange portion there are weep holes provided.

Orchard shows a bracket that which has a joist fastening flange portion (area above 11) and a support flange portion (29) which has a screw for a fastener (31), used for a more secure attachment of the device and also has weep holes (27) at an intersection for letting water drain from the bracket. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Orchard to add this feature to the bracket of Cannarsa in order to more firmly attach the device to the desired surface and to let water drain from the device.

### ***Response to Arguments***

Applicant has argued that the rejection needs clarification due to the fact that claims 15-17 were rejected under 5775048 to Leavens, when 5775048 is Orchard. This clarification has been made above. The statutory period for Reply has been re-started due to this error in the second non-final action, dated 6/28/04.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 703-308-3519 (informal amendments/communications).

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.



AJS  
Amy J. Sterling  
9/23/04

  
ANITA KING  
PRIMARY EXAMINER